Supreme Court, U.S.
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No. 01-1230

IN THE

Supreme Court of the United States

EUGENE SPARING,

Petitioner,

v.

VILLAGE OF OLYMPIA FIELDS and JAMES KEITH,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

Table of Cited Authorities iii

Statement of the Case 1

Reasons for Denying the Writ 5

I. The Writ Should Be Denied Because The Petitioner Improperly Seeks Review Of The Seventh Circuit's Finding In His Favor That The Warrantless Doorway Arrest At Issue Violated The Fourth Amendment And, In Any Event, The Court's Finding Of Qualified Immunity On Petitioner's Warrantless Arrest Claim Was Correct Because the Law Surrounding Doorway Arrests Was Not Clearly Established 5

A. Petitioner Improperly Seeks Review of the Court of Appeals' Finding that The Warrantless Doorway Arrest Violated the Fourth Amendment 5

B. The Seventh Circuit Properly Found That Officer Keith Was Entitled To Qualified Immunity Because The Law Surrounding Doorway Arrests Was Not Clearly Established Or Settled At The Time Of This Arrest 6

Contents

Page

II. The Writ Should Be Denied Because The Seventh Circuit Properly Applied The "Closely Related Offense" Doctrine And Its Decision Is Consistent With The Fourth Amendment And The View Of Other Circuits 9

A. The Seventh Circuit's Application of The Closely Related Offense Doctrine Was Proper and Comports With The Fourth Amendment 9

B. The Seventh Circuit's Application Of The Closely Related Offense Doctrine Is Consistent, Rather Than In Conflict, With Other Circuit Decisions 14

III. The Writ Should Be Denied Because The Seventh Circuit Properly Found That The Evidence Was Insufficient To Establish That Criminal Case Was Terminated In a Manner Indicative Of Sparing's Innocence And Properly Granted Summary Judgment To The Village And Keith On State Law Malicious Prosecution Claim 17

Conclusion 20

TABLE OF CITED AUTHORITIES

Page

Cases:

Avery v. King, 110 F.3d 12 (6th Cir. 1997) 15

Biddle v. Martin, 992 F.2d 673 (7th Cir. 1993) 9-10, 12, 13, 14

Booker v. Ward, 888 F. Supp. 869 (N.D. Ill. 1995) ... 19

Dobiecki v. Palacios, 829 F. Supp. 229 (N.D. Ill. 1993) 19

Gasho v. United States, 39 F.3d 1420 (9th Cir. 1994) 16

Gassner v. City of Garland, Tex., 864 F.2d 394 (5th Cir. 1989) 13, 16

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 9

Ienco v. City of Chicago, 148 F. Supp. 2d 938 (N.D. Ill. 2001) 18, 19

Joiner v. Benton Community Bank, 82 Ill.2d 40, 411 N.E.2d 229 (1980) 17

Joyce v. Town of Tewksbury, 112 F.3d 19 (1st Cir. 1997) (en banc) 7, 8, 9

Cited Authorities

Page

People v. Hilgenberg, 223 Ill.App.3d 286, 585 N.E.2d 180 (2d Dist. 1991) 10

People v. Stevens, 40 Ill.App.3d 303, 352 N.E.2d 352 (1st Dist. 1976) 11, 12

Pfannstiel v. City of Marion, 918 F.2d 1178 (5th Cir. 1990) 16

Richardson v. Bonds, 860 F.2d 1427 (7th Cir. 1988) 10, 13

Sheehy v. Town of Plymouth, 191 F.3d 15 (1st Cir. 1999) 14, 15

Trejo v. Perez, 693 F.2d 482 (5th Cir. 1982) 13, 16

United States v. Berkowitz, 927 F.2d 1376 (7th Cir. 1991) 6, 7

Wilder v. Prokop, 846 F.2d 613 (10th Cir. 1988) .. 19

Wolf v. Buss (America), 77 F.3d 914 (7th Cir. 1996), *cert. denied*, 519 U.S. 866 ..... 18, 19

Cited Authorities

Page

Statutes:

42 U.S.C. § 1983 ..... 1, 3, 6, 9, 13

720 ILCS 5/26-1(a)(4) 11, 15

720 ILCS 5/31-1 ..... 10, 15

Rule:

Federal Rule of Civil Procedure 56(c) 18

United States Constitution:

Fourth Amendment ..... *passim*

STATEMENT OF THE CASE

The petitioner, Eugene Sparing, ("Sparing") brought this action under 42 U.S.C. § 1983 alleging that James Keith ("Keith"), a police officer with the Village of Olympia Fields (the "Village"), violated Sparing's Fourth Amendment rights by entering his home and arresting him without a warrant and without probable cause. Petitioner also invoked the district court's supplemental jurisdiction to assert the Illinois tort of malicious prosecution against Keith and the Village (where appropriate, "Respondents"). Keith moved for summary judgment on petitioner's Fourth Amendment claims arguing that (1) the doorway arrest of Sparing was lawful and did not violate the Fourth Amendment warrant requirement, (2) Sparing's arrest is supported by probable cause, and (3) Keith is entitled to qualified immunity. As to petitioner's state law claim, Respondents argued that probable cause existed and is an absolute defense to this claim.

Sparing's arrest arose out of an alleged scheme organized by a friend named David Smith. Smith filed a criminal report with the Olympia Fields Police Department on July 23, 1996. In his Complaint, Smith alleged that he fired Tom Sanfratello on May 31, 1996, and that Sanfratello later stole files from the office and forged two checks made out to himself. Smith also stated that on the morning of July 9, 1996, Sparing saw Sanfratello in the office. According to Smith, Sparing knocked on the window to get Sanfratello's attention, but Sanfratello did not respond. *266 F.3d 684, 686.*

In mid-August of 1996, Officer James Keith called Sparing to confirm his part of Smith's story. Sparing did. Keith next interviewed Sanfratello, who disputed the story in several respects, but admitted to signing the checks because

he was a signatory on the account and was owed money by Smith. He also admitted to taking files, but claimed to have returned them to Smith. Sanfratello also told Keith that he previously had a conversation with Sparing's secretary, Linda Parker, who told him that she had a facsimile sent by Smith to Sparing and that she believed that they were "up to no good." Sanfratello provided a copy of that fax to Keith; it read:

> *Gene*
>
> July 9, 1996 at 2:45 a.m. observed Tom at office copying files from computer and photocopying. You knocked on windows and Tom ignored you. You left and went home.
>
> Thanks
>
> David

Id. The next day, Keith had a telephone conversation with Parker. According to Keith, Parker said that after receiving the fax from Smith, she made a copy and gave the original to Sparing, who replied, "Dave wants me to perjure myself." *Id.*

The following day, (August 15, 1986), Parker telephoned Keith, recounting to him an encounter she recently had with Sparing. She said that Sparing had contacted her to have lunch and that when he picked her up, he asked with whom she had been talking that week. Parker initially feigned ignorance, but Sparing persisted. He drove her by the Olympia Fields Police Department to "refresh [her] memory," and again asked with whom she had been talking, this time informing her that a friend of Sanfratello had already put him in the

know. She then admitted to talking with the police about the facsimile from Smith. Sparing, according to Parker, replied, "I thought you were my friend. How could you do this to me? Don't you know that this could lead to criminal charges against me?" Parker told Keith that Sparing then took her back home, told her to get out of the car and that she was fired. He also told Parker that he was evicting her from the house she was renting from him and taking back his van on which she was making payments. Later that day, Keith spoke with Parker again, and she told him the same story. *266 F.3d at 686-687.*

After the meeting with Parker, Keith went to Sparing's house and knocked on the door. Sparing answered the door, and Keith asked that he identify himself, which he did. At that moment, Sparing was still standing inside his home behind his closed screen door, and Keith was standing outside. Keith then advised Sparing that he was under arrest.[1] To which, Sparing inquired whether he had a warrant. Keith stated that he did not, but rather that he had probable cause. Sparing asked whether he could place something down, then turned, and walked away from the screen door further into his home. Keith entered the residence, taking several steps inside. Sparing came back to Keith, and they both left the house. *Id.*

Sparing filed a lawsuit against the Village of Olympia Fields and Officer James Keith alleging violations of federal civil rights law as well as Illinois state law. Sparing alleged in his complaint that his arrest was in violation of the Fourth Amendment, and he sought damages under 42 U.S.C. § 1983.

1. In his deposition, Keith indicated that he arrested Sparing for obstructing a police officer, although he also had in mind the offense of disorderly conduct.

Specifically, Sparing complained that Keith arrested him in his home without a warrant and without probable cause. He also alleged that the Village and Keith maliciously prosecuted him in violation of the Illinois tort law. *266 F.3d at 687.*

The district court held that Sparing had failed to demonstrate a constitutional violation, and that Keith was entitled to qualified immunity. The district court concluded that the arrest did not violate the Fourth Amendment because Sparing acquiesced to Keith's entry to complete an arrest announced outside his home, and because probable cause existed for an offense closely related to the one for which Sparing was arrested. Having found probable cause for the arrest, the district court also concluded that Sparing could not meet the elements of malicious prosecution. The district court then entered judgment in favor of the Village and Keith. The appeal to the Seventh Circuit followed. *Id.*

The Court of Appeals held that: (1) Sparing's warrantless arrest violated his Fourth Amendment rights; but (2) Officer Keith was entitled to qualified immunity because the law surrounding doorway arrests was not clearly established at the time of Sparing's arrest, and because probable cause for the arrest existed under the closely-related offense doctrine; and (3) criminal case did not terminate in a manner indicative of Sparing's innocence. Petitioner seeks review of the Seventh Circuit's decision on these issues.

REASONS FOR DENYING THE WRIT

I. THE WRIT SHOULD BE DENIED BECAUSE THE PETITIONER IMPROPERLY SEEKS REVIEW OF THE SEVENTH CIRCUIT'S FINDING IN HIS FAVOR THAT THE WARRANTLESS DOORWAY ARREST AT ISSUE VIOLATED THE FOURTH AMENDMENT AND, IN ANY EVENT, THE COURT'S FINDING OF QUALIFIED IMMUNITY ON PETITIONER'S WARRANTLESS ARREST CLAIM WAS CORRECT BECAUSE THE LAW SURROUNDING DOORWAY ARRESTS WAS NOT CLEARLY ESTABLISHED

A. Petitioner Improperly Seeks Review of the Court of Appeals' Finding that The Warrantless Doorway Arrest Violated the Fourth Amendment

Petitioner improperly seeks review of an issue on which he prevailed below. Specifically, the petitioner is asking this Court to review the Court of Appeals' finding in his favor that Officer Keith violated Sparing's Fourth Amendment right by making a slight entry (taking a few step inside) into Sparing's home after announcing the arrest from outside as Sparing stood in the threshold of an open interior doorway behind a closed screen door. Respondents disagree with this finding and maintain as they did below that Keith's slight entry into Sparing's home under the facts and circumstances of this case did not violate the Fourth Amendment. In any event, the finding of the Court of Appeals is not a proper subject for this Court's review as the determination below was in favor of the petitioner. Therefore, the only issue on which the petitioner can properly seek review is on the issue

of qualified immunity asserted by Officer Keith on the plaintiff's Fourth Amendment warrantless arrest claim under 42 U.S.C. § 1983.

B. The Seventh Circuit Properly Found That Officer Keith Was Entitled To Qualified Immunity Because The Law Surrounding Doorway Arrests Was Not Clearly Established Or Settled At The Time Of This Arrest

Respondents maintain that the warrantless doorway arrest of Sparing did not violate the Fourth Amendment and disagree with the finding below. Indeed, the Respondents argued below that *United States v. Berkowitz*, 927 F.2d 1376, 1387 (7th Cir. 1991) supported their position that the warrantless arrest of Sparing under the facts and circumstances of this case did not violate the Fourth Amendment. In *Berkowitz,* the Seventh Circuit held:

> if the police go to an individual's home without a warrant, knock on the door, announce from outside the home that the individual is under arrest when she opens the door to answer, and the individual acquiesces to a slight entry to complete the arrest, the entry is reasonable under the Fourth Amendment and consistent with *Payton*.

Id. Here, Respondents presented undisputed evidence that Sparing did not object or otherwise protest the arrest following Officer Keith's announcement, but asked only if he could put his portable telephone down, took a few steps back inside to set the telephone down, returned to Keith (who had taken a few steps inside behind Sparing) and then left the residence with Keith. The evidence was also

uncontested that Sparing was actually placed under arrest and handcuffed outside of the front of his residence in the driveway. Respondents maintained below that under *Berkowitz*, the law in the Seventh Circuit at the time of this arrest in August of 1996 established that the arrest of Sparing comported with the Fourth Amendment. *See Berkowitz*, 927 F.2d at 1387 (upholding slight entry into the home to complete an arrest announced outside the home when the individual acquiesced to the entry while standing fractions of an inch behind the threshold of her home with the door open as reasonable under the Fourth Amendment.)

The Court of Appeals disagreed with the Respondents' position, but went on to consider Officer Keith's qualified immunity defense to Sparing's Fourth Amendment warrant claim applying the two-part test in accordance with Supreme Court precedent. First, the court considered whether Sparing alleged the deprivation of an actual constitutional right. *266 F.3d at 688.* In light of its holding that the warrantless arrest violated the Fourth Amendment, the first prong was met. The court then considered whether the second part of the test was satisfied, *i.e.*, whether that right was clearly established at the time of the alleged violation. *Id.* The Seventh Circuit concluded that the law surrounding Fourth Amendment "doorway arrest" questions, particularly on the facts of this case, was not sufficiently settled or defined at the time of this arrest to defeat qualified immunity, relying generally on *Joyce v. Town of Tewksbury*, 112 F.3d 19 (1st Cir. 1997) (en banc) *Id. at 691.*

In *Joyce*, the police went to the plaintiff's parents' home to arrest him for violation of a domestic violence restraining order. The police did not have a search warrant. Plaintiff answered the officers' knock at the door by opening the

interior door, but keeping the outer screen door closed. The police informed plaintiff he was under arrest, and asked him to step outside. Instead, the plaintiff retorted "ya right" and withdrew from the doorway, calling for his mother. The officers followed the plaintiff into the house and arrested him inside. The arrest occurred on August 6, 1989. 112 F.3d at 20-21. The plaintiff in *Joyce* brought suit against the police alleging Fourth Amendment violations for the alleged illegal entry into the plaintiff's parents' home without a warrant. *Id.* at 21. The First Circuit held that the police were entitled to qualified immunity and stated as follows:

> Given the unsettled state of the law, we have no hesitation in concluding that the officers in this case are protected by qualified immunity, which protects public officials against section 1983 liability so long as they acted reasonably. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991); *Anderson v. Creighton*, 483 U.S. 635, 639 (1987). As the Supreme Court has said, qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). The aim is to protect those who might otherwise be deterred from official duties for fear that an innocent mistake would create personal liability.
>
> * * * *
>
> The critical point here is that Officers Donovan and Budryk are "entitled to qualified immunity [so long as] their decision was reasonable, *even if mistaken*." (Citation omitted). Thus, the officers are not liable unless in

> the circumstances of this case, it is reasonably well-established, and should therefore have been clear to the officers, that the entry without a search warrant was unlawful. Because it is not even clear that there was a violation – a point that we do not decide – there certainly was no violation so patent as to strip the officers of qualified immunity.

112 F.3d at 23.

The law surrounding doorway arrests under the facts and circumstances of this case did not become any more clear between the time of the arrest in *Joyce* on August 6, 1989 and the date of the arrest involving Sparing on August 15, 1996. Under the qualified immunity defense, a rule of law is not clearly established if a defendant could not be said to know that it prohibited his conduct. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Accordingly, the Seventh Circuit properly granted qualified immunity to Keith on Sparing's Fourth Amendment warrant claim under Section 1983.

II. THE WRIT SHOULD BE DENIED BECAUSE THE SEVENTH CIRCUIT PROPERLY APPLIED THE "CLOSELY RELATED OFFENSE" DOCTRINE AND ITS DECISION IS CONSISTENT WITH THE FOURTH AMENDMENT AND THE VIEW OF OTHER CIRCUITS

A. The Seventh Circuit's Application of The Closely Related Offense Doctrine Was Proper and Comports With The Fourth Amendment

The Seventh Circuit correctly found there was probable cause for Sparing's arrest under the closely related offense doctrine, relying on *Biddle v. Martin*, 992 F.2d 673, 676

(7th Cir. 1993). In *Biddle*, the plaintiff was arrested for obstructing a police officer in violation of 720 Illinois Compiled Statutes 5/31-1 for refusal to provide his name and identification, as well as swearing and shouting at a police officer which prevented the officer from filling out a tow report for the plaintiff's vehicle. *Id.* at 674. The charge against the plaintiff was eventually dismissed. Plaintiff sued for false arrest and for malicious prosecution under Section 1983. *Id.* at 674. The district court granted summary judgment for the officers, finding that the plaintiff's unlawful arrest claim was without merit because the officers had probable cause to arrest him for obstruction of justice, disorderly conduct, and for allowing someone to operate his vehicle in a manner contrary to law. On appeal, the Seventh Circuit upheld the district court's decision, citing *Richardson v. Bonds*, 860 F.2d 1427 (7th Cir. 1988) (holding that probable cause need not exist on the charge for which a plaintiff was arrested, so long as probable cause exists for arrest on a closely related charge.) Using an objective standard, the Seventh Circuit in *Biddle* determined a reasonable police officer could have believed, even mistakenly, that she had probable cause to arrest plaintiff on one of the charges offered in justification. 992 F.2d at 678.

In the case at bar, both the district court and the Seventh Circuit found that probable cause did not exist for the charge of obstructing a police officer (the offense for which Sparing was arrested and charged) because Sparing's conduct could not be considered a "physical act" which is a necessary element of the offense, relying on *People v. Hilgenberg*, 223 Ill.App.3d 286, 585 N.E.2d 180, 183-184 (2d Dist. 1991) (holding Illinois criminal statute, 720 ILCS 5/31-1, prohibiting any person from "resisting" or "obstructing" peace officer does not proscribe mere argument with police

about validity of arrest, but proscribes only some "physical act" which imposes obstacle which may impede, hinder, interrupt, prevent or delay the performance of officer's duties.) However, here the Seventh Circuit found probable cause existed for the closely related offense of disorderly conduct under Illinois criminal law. The disorderly conduct statute provides:

> (a) A person commits disorderly conduct when he knowingly:
>
> * * * *
>
> (4) Transmits or causes to be transmitted in any manner to any peace officer, public officer or public employee a report to the effect that an offense will be committed, is being committed, or has been committed, knowing at the time of such transmission that there is no reasonable ground for believing that such an offense will be committed, is being committed, or has been committed [.]

720 ILCS 5/26-1(a)(4).

Sparing contended that this section of the Illinois disorderly conduct did not apply because the statute requires a written report, and that the report must falsely identify an offense, not simply acts that may be part of a criminal offense. *266 F.2d at 691*. The Seventh Circuit disagreed with both of these contentions. First, the court correctly interpreted Illinois case law, in particular, *People v. Stevens*, 40 Ill.App.3d 303, 352 N.E.2d 352 (1st Dist. 1976), which established that either written or oral reports may satisfy the element of a "report"

in the statute. *Id* at 354. The Seventh Circuit rejected Sparing's attempt to distinguish *Stevens*, as well as Sparing's other contention that the defendant in *Stevens* reported a "robbery," arguing that Sparing only relayed information to Keith about what he had observed and never stated that an "offense" had been committed. The Seventh Circuit flatly rejected plaintiff's creative arguments and held: "[t]he plain language of the statute is not limited to false reports of an offense, but covers false reports 'to the effect that an offense . . . has been committed.' 720 ILCS 5/26-1(a)(4)." *266 F.3d at 692*. The Seventh Circuit correctly concluded that when Sparing told Keith that he had seen Sanfrantello in the office copying files from a computer and photocopying, it was to corroborate Smith's accusation of criminal trespass and properly held "[Sparing's] report had the effect of falsely conveying to a police officer that an offense had been committed." *Id*.

In applying the closely related offense doctrine in *Biddle v. Martin*, 992 F.2d 673, 676 (7th Cir. 1993), the Seventh Circuit observed:

> While an arresting officer's subjective knowledge of facts sufficient to constitute probable cause is central to evaluation of the propriety of an arrest, *we do not believe that the officer's view of the legal basis for the arrest is important.* (Emphasis added) Under the principles of *Harlow v. Fitzgerald* and the Fourth Amendment, an objective standard applies where the parties present alternative legal justifications for an arrest. The issue is whether a reasonably competent police officer, with knowledge of the facts actually

> known by the arresting officer, would have concluded that probable cause existed to arrest for the offense offered as justification.

Id. (quoting *Richardson v. Bonds*, 860 F.2d 1427, 1430-31 (7th Cir. 1988).

The closely related offense doctrine comports with the Fourth Amendment while at the same time strikes a balance between two competing concerns. First, that police officers making warrantless arrests should not be forced "to routinely charge every citizen taken into custody with every offense that they thought he could be held for in order to increase the chances that at least one charge would survive the test for probable cause." *Trejo v. Perez*, 693 F.2d 482, 485 (5th Cir. 1982). Second, that police officers should not be allowed "to justify what from the outset may have been actually sham or fraudulent arrests on the basis of *ex post facto* justifications that turn out to be valid." *Gassner v. City of Garland, Tex.*, 864 F.2d 394 (5th Cir. 1989). By limiting the application of this doctrine to cases where a police officer lacks probable cause to make a warrantless arrest for the charged offense, but nevertheless possessed probable cause to make a warrantless arrest for an uncharged offense *arising from the same conduct* (emphasis added), the federal courts have both grasped the realities of modern law enforcement and protected well-established Fourth Amendment freedoms. *Biddle v. Martin*, 992 F.2d 673, 676-77 (7th Cir. 1993).

Accordingly, the Seventh Circuit correctly found that probable cause existed for the closely-related charge of disorderly conduct and properly held that Officer Keith was entitled to summary judgment on plaintiff's Section 1983 false arrest claim.

B. The Seventh Circuit's Application Of The Closely Related Offense Doctrine Is Consistent, Rather Than In Conflict, With Other Circuit Decisions

Contrary to the plaintiff's suggestion, the Seventh Circuit's application of the closely related offense doctrine is consistent with other federal circuit decisions. For example, the only case relied on by the plaintiff is *Sheehy v. Town of Plymouth*, 191 F.3d 15 (1st Cir. 1999). In *Sheehy*, the plaintiff was arrested for assault and battery with a dangerous weapon, as a result of a dispute with his neighbor, and for disorderly conduct for not cooperating with the investigating officers, *i.e.*, refusing to identify himself. Both charges were later dismissed, and the plaintiff filed a claim against the Town and the arresting officer for false arrest. The district court entered summary judgment in favor of the arresting officer, adopting the related crimes defense. *Id* at 17. On appeal, the First Circuit reversed finding that material questions of fact existed as to the facts underlying the arrest for disorderly conduct and, therefore, summary judgment on qualified immunity grounds was improper. 191 F.3d at 19-20. No such dispute exists here.

Nevertheless, *Sheehy's* discussion of the related crimes defense sets forth the same analysis utilized in the instant case. First, the crime with which the plaintiff is charged and the crime offered to the court as justification for the arrest must relate to the same conduct. Second, the two crimes must share similar elements or be directed generally at prohibiting the same type of conduct. *Id*. The *Sheehy* court further observed the related crimes defense "allows the arresting officer to choose which crime she will charge without having to charge every single offense sustainable on the facts, and yet does not open the door to the extrapolation of offenses in an effort to justify a sham arrest," relying on *Biddle v. Martin*, 992 F.2d 673, 677 (7th Cir. 1993). *Id* at 20.

The Seventh Circuit's analysis in this case is consistent with the two-part test applied in *Sheehy*. First, the offense charged (obstructing a police officer in violation of 720 ILCS 5/31-1),[2] and the uncharged offense (disorderly conduct in violation of 720 ILCS 5/26-1(a)(4), *supra*) relate to the same conduct by Sparing, *i.e.*, provision of false information to a police officer. Second, the two criminal offenses (obstructing a police officer and disorderly conduct) do share similar elements and are directed generally at prohibiting the same type of conduct, *i.e.*, interference with the efficient administration of criminal justice.

The decision in this case is also consistent with the other federal circuit decisions applying the closely-related offense doctrine. In *Avery v. King*, 110 F.3d 12 (6th Cir. 1997), the plaintiff was arrested for forcibly interfering with a federal officer's administration of justice. The district court found that the officer lacked probable cause to arrest the plaintiff under the offense charged because he did not use force or threat of force as required by the statute. 110 F.2d at 14. However, the Sixth Circuit found that the offense charged was "sufficiently" related to the offense of wilful obstruction offered in justification for the plaintiff's arrest and, therefore, probable cause existed for plaintiff's arrest. 110 F.2d at 15.

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2. Article 31. Interference With Public Officers

5/31-1. *Resisting or obstructing a peace officer*

(a) A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer . . . of any authorized act within his official capacity commits a Class A misdemeanor. *720 Illinois Compiled Statutes 5/31-1.*

See, e.g., *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1180 (5th Cir. 1990) (holding that although the police officers may have improperly arrested the plaintiff for trespassing after he loudly and abusively questioned their authority, they were entitled to qualified immunity because the plaintiff's loud and abusive conduct provided them with arguable probable cause to arrest him for disorderly conduct); *Trejo v. Perez*, 693 F.2d 482, 485 (5th Cir. 1982) (finding that although police officer lacked probable cause to arrest the plaintiff for disorderly conduct for using vulgar language in response to request for identification, the officer was entitled to raise the defense that he had arguable probable cause to arrest the plaintiff for the related offense of failing to furnish the requested identification). *See also Gasho v. United States*, 39 F.3d 1420, 1428 (9th Cir. 1994) ("probable cause may still exist for a closely related offense, even if that offense was not invoked by the arresting officer, as long as it involves the same conduct for which the subject was arrested"); *Gassner v. City of Garland, Tex.*, 864 F.2d 394, 396-400 (5th Cir. 1989) (holding that the police officer was entitled to qualified immunity because he had arguable probable cause to arrest Gassner for disobeying the order of a police officer enforcing the traffic laws even though the district court found that there was not arguable probable cause to arrest Gassner for the charged offense of disorderly conduct.)

For the reasons discussed, the Seventh Circuit properly applied the closely related offense doctrine in the instant case, and there is no conflict among the federal circuits which warrants this Court's review.

III. THE WRIT SHOULD BE DENIED BECAUSE THE SEVENTH CIRCUIT PROPERLY FOUND THAT THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT CRIMINAL CASE WAS TERMINATED IN A MANNER INDICATIVE OF SPARING'S INNOCENCE AND PROPERLY GRANTED SUMMARY JUDGMENT TO THE VILLAGE AND KEITH ON STATE LAW MALICIOUS PROSECUTION CLAIM

Petitioner also seeks review of the Seventh Circuit's decision upholding summary judgment on plaintiff's supplemental state law malicious prosecution claim. The Seventh Circuit, reviewing the district court's summary judgment on that claim *de novo,* upheld the second of two grounds relied on by the district court. The Seventh Circuit disagreed with the district court's analysis that probable cause on the closely related offense defeated the state law claim of malicious prosecution of the plaintiff for the crime of obstructing a police officer. The Seventh Circuit found that no Illinois case had expressly adopted the closely related offense doctrine at least in malicious prosecution tort cases. Therefore, the Seventh Circuit declined to rest its opinion on this ground. *266 F.3d at 692.* However, because Illinois law does require that the criminal proceeding upon which a malicious prosecution action is predicated be terminated in a manner indicative of the innocence of the accused (*Joiner v. Benton Community Bank*, 82 Ill.2d 40, 411 N.E.2d 229, 232 (1980)), the Seventh Circuit affirmed summary judgment on the lack of this element. *Id.*

The Seventh Circuit properly found that Sparing could not meet his burden as to this element of his claim. The evidence presented showed that the criminal case was

dismissed because the arrest was effected without a warrant. A prosecutor's conclusion that dismissal is warranted because the illegal arrest of the accused might jeopardize the prosecution is hardly a dismissal indicative of the innocence of the accused as required under Illinois tort law. A favorable termination, for purposes of a malicious prosecution claim, must be one that deals with the factual issues of the case. *Ienco v. City of Chicago*, 148 F. Supp. 2d 938, 944 (N.D. Ill. 2001), *reversed on other grounds*, 2002 WL 548891 (7th Cir. 2002).[3] *Ienco* involved the arrest and prosecution of a defendant involved in a debt collection matter who was unlawfully arrested and searched, and convicted on a number of charges, which were subsequently reversed on appeal. The evidence used in the original criminal case was reliable, but suppressed because of the illegal arrest. Since the original conviction was reversed, the court determined that the parties never reached the merits of the case. *Id.* at 945. Similarly, in this case, the criminal court never reached the merits of the case against Sparing and consequently, there was no determination of the factual issues of the case. The district court correctly held, and the Seventh Circuit correctly affirmed summary judgment, based on this element.

The plaintiff challenges the procedure because the district court raised this element *sua sponte*. However, the district court was not precluded from doing so. In *Wolf v. Buss (America)*, 77 F.3d 914 (7th Cir. 1996), the plaintiff successfully argued that under Federal Rule of Civil Procedure 56(c), a district court's consideration of a summary judgment motion is not limited to the content of the parties' pleadings, but is expanded to include depositions, answers to interrogatories, and admissions on file in addition to any

3. Only the Westlaw citation is currently available.

affidavits. *Id.* at 921. Viewing the record beyond the summary judgment motion allowed the court to enter summary judgment. Notably, in *Wolf*, the plaintiff's *petition for certiorari* was denied by the United States Supreme Court (519 U.S. 866), and a request for rehearing on the *petition for certiorari* was denied as well. (519 U.S. 1023). Likewise, the Tenth Circuit has adopted an identical rule. In *Wilder v. Prokop*, 846 F.2d 613 (10th Cir. 1988), the court held that a district court could grant summary judgment on grounds other than those raised in a motion before the court if the facts were developed and showed entitlement of the non-moving party to summary judgment. *Id.* at 623.

An appellate court can affirm a lower court judgment based on any reason that is supported by the record. The Seventh Circuit properly determined that plaintiff could not meet his burden under Illinois tort law because as a matter of law, the dismissal of a criminal prosecution because of a defective arrest was not a termination in a manner indicative of the plaintiff's innocence. *See, e.g., Ienco v. City of Chicago, supra*; *Dobiecki v. Palacios*, 829 F. Supp. 229, 235 (N.D. Ill. 1993) (termination of criminal proceedings for technical failure to comply with *Miranda* does not indicate innocence for purposes of malicious prosecution claim); *Booker v. Ward*, 888 F. Supp. 869, 877 (N.D. Ill. 1995) (dismissal of criminal proceeding following suppression of evidence based on "technical" grounds not termination in a manner "indicative of innocence" under Illinois law).

Both the district court and the Seventh Circuit correctly concluded that the only evidence in the record showed that the criminal action was "dismissed for lack of warrant". The plaintiff sees some injustice based on the district court's raising the issue *sua sponte*. However, the court could

reasonably conclude that that fact could not be disputed. How could it? Moreover, even if it could be disputed, the plaintiff was not prevented in any way from pointing the dispute out to the courts below in a post-judgment motion. Plaintiff had ample opportunity to argue the legal question of whether such a dismissal could be indicative of innocence and lost on that point. For these reasons, the Seventh Circuit properly affirmed the summary judgment in favor of the Village and Officer Keith on plaintiff's state law malicious prosecution claim.

CONCLUSION

As a result, the *Writ* should be denied.

Respectfully submitted,

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